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# Administration of the Taft-Hartley Act

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B U L L E T I N

## EDITORIAL NOTE

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This *Bulletin* series is designed to present periodically information and ideas on topics of current interest in labor and industrial relations. The presentation is non-technical and is designed for general, popular use. No effort is made to treat the topics exhaustively.

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## ADMINISTRATION OF THE TAFT-HARTLEY ACT

By ALVIN L. PARK

THE LABOR MANAGEMENT RELATIONS ACT OF 1947, as the Taft-Hartley Act is officially named, marked a drastic change in federal regulation of industrial relations. In the twelve years since the passage of the preceding National Labor Relations Act, the NLRB and the courts had built up a body of interpretive decisions so that there was little doubt as to the real meaning of the law. There was an established ruling covering almost any union-management situation.

Passage of the Taft-Hartley Act, however, added new provisions and amendments to the original Wagner Act. This meant, of course, that the Act's real meaning would depend upon the interpretation of these provisions by the National Labor Relations Board and the courts.

To some extent, interpretations under the Wagner Act remained, to be modified to conform with the way in which the law, as written, was modified. For example, the Board relied on past decisions determining an employer's refusal to bargain in good faith, in deciding whether or not a union was bargaining in good faith under the provisions of the new Act.

Recent actions in Congress indicate that the Taft-Hartley Act may be revised. As a result, some of the decisions described in this bulletin may no longer apply. But whatever the future of the Act, these administrative rulings and court decisions have become history. Like previous rulings under the Wagner Act, they will serve as a precedent to be followed or changed as the Act remains the same or is rewritten. And since these rulings are an important part of the law in operation, they doubtless will be carefully considered by the framers of new labor legislation. The record, then, is worth presenting.

When the Taft-Hartley Act was passed, what it would mean, in use, was anybody's guess. And almost everyone concerned with industrial relations guessed. This speculation resulted, in part, from the complicated nature of the Act. It is long. Its thirty pages of print are sprinkled with "sub-sections of sub-sections," and it was popularly referred to as the lawyers' dream.

Some provisions were more hotly debated than others. These were union unfair labor practices, the use of injunctions, the representation and election procedures, the damage suit provisions, coverage of the Act, constitutionality of the affidavit requirement, and the ban on political expenditures.

The purpose of this bulletin is to discuss those provisions of the Act on which the NLRB and the courts have made important interpretations affecting the operation of the Act. This is not an attempt to analyze the entire statute. There have been many such explanations, most of which have dealt with the law as written rather than as interpreted by administrative and judicial bodies. (A brief summary of the major provisions of the Act is contained in the ILIR Bulletin, "Federal Labor Legislation, 1947." A subsequent bulletin will deal with the effects of the law on employers, labor unions, and government practices in industrial relations.)

This bulletin, which covers the period from the passage of the Act to the end of 1948, will not attempt to present all of the cases that have been handled by the Board and the courts. We will deal only with those cases in which real interpretive decisions of the law have been made. We will also mention, however, those provisions of the Act about which no definite pattern has as yet been established by administrative or legal action.

## **WORK LOAD OF THE BOARD**

The number of cases from which these few important decisions are taken has reached an impressive total. From August 22, 1947, the date when most of the provisions of the Act became effective, to December 31, 1948, there were 51,991 cases filed with the NLRB. Of these, 45,881 were processed, leaving a backlog of 6,110 cases. It is important to note that the great bulk of these cases are petitions for union shop elections. (The Act provides that before a union shop clause can be included in a contract, a majority of all the employees eligible to vote must vote affirmatively for such a clause in an NLRB-conducted election. Upon receipt of a petition signed by thirty per cent or more of the bargaining unit, the Board then arranges and conducts a secret ballot on the question.) As of December 31, 1948, 35,646 union shop cases had been filed. In these

cases the NLRB procedure is routine. No significant interpretive ruling has been made on any union shop case.

Of the remaining cases filed, most of them were concerned with representation and election procedures. There were 9,918 representation cases and 645 decertification petitions. (In questions of representation, the Act states that when a union has made a claim that it represents a majority of the employees, any individual, group of individuals, labor organization, or employer may petition the Board for a certification election.) The Board then holds hearings, and if it finds a question of representation exists, it conducts an election and certifies the organization receiving a majority of the votes as the bargaining agent. Decertification petitions, which claim that the union no longer represents a majority of the employees, may be filed by any individual. The Board then conducts hearings and holds an election to see if the union is to be removed as the bargaining agent for the unit. In both certification and decertification cases, no election can be held when a valid election has been conducted within the preceding twelve-month period. Although the employer's right to request a certification election, in certain instances, is written into the statute, only 697 of 9,918 representation cases were filed by employers, while 9,221 were filed by unions. A number of interpretive board and court cases have been decided on this question. These include the issues of union affidavit requirements, strikers' voting eligibility, and other voting and petitioning rules.

The remaining 6,782 cases of the total 51,991 of all kinds of cases that were filed by December 31, 1948, were unfair labor practice cases. Of these, about one-fifth, or 1,256 cases were unfair labor practice charges filed against unions (a new provision in the Taft-Hartley Act). In the remaining four-fifths, or 5,526 cases, unfair labor practices were charged against employers. Because this latter provision was a part of the original National Labor Relations Act, and there were already established administrative rulings on this provision, the bulk of new rulings dealt with union unfair labor practices.

Few cases have come up under the question of what industries and actions are covered by the Act and the section banning political expenditures and contributions, but there have been important

rulings on both of these issues. Damage suit provisions — which were of chief concern to labor organizations — have not been before the courts. Section 301 of the Act states that a union may sue or be sued. Section 303 states that anyone may sue for damages as a result of injuries arising from secondary boycotts, jurisdictional strikes, or strikes by one union against certification of another as bargaining agent. Several damage suits have been started — most of them by employers — but have been dropped before any final decision was reached.

## **UNION UNFAIR LABOR PRACTICE**

As stated earlier, the number of unfair labor practice charges against unions was a small part of the total number of cases dealing with unfair labor practices. This section appears in the law for the first time in the Taft-Hartley Act, and there were several important interpretations on this subject. The Act states that union unfair labor practices include: (1) coercion of employers and employees; (2) discrimination against employees; (3) refusal to bargain; (4) secondary boycotts, strikes against certification, jurisdictional strikes; (5) excessive initiation fees; and (6) payment for work not performed.

### **Union Restraint or Coercion**

Section 8(b)(1) deals with union restraint or coercion of employees in collective bargaining activities, or of employers in the selection of bargaining representatives. The most comprehensive decision on this question was one involving a local union of the United Shoe Workers of America and the Perry Norvell Company.<sup>1</sup> In this case, the NLRB indicated some union activities which are prohibited, and some which are not. First, the Board held the strike itself was not coercive, even though it was in violation of a contract. The Board held the following union acts not coercive on employees in their selection of a bargaining agent: (1) assembling a large number of people around the entrance of the plant, since there was no attempt to prevent entrance to or exit from the plant; (2) threatening to run the opposing union representative out of town; (3) name-calling, such as "scab"; and (4) forming a crowd so as to cause non-strikers to go out of their way to get to the plant gate.

The Board held these acts to be coercive: (1) threatening to beat up non-strikers; (2) shoving a non-striker at the plant entrance; (3) chasing a non-striker and beating him up.

In another case<sup>2</sup> on this subject, some of these same union actions were again held to be coercive. In this case, the Board said name-calling was permitted under the doctrine of picketing as "freedom of speech," but threats of violence and pursuit of non-strikers were coercive. The Board went further in this case and ruled that passive force, such as standing in the way of non-strikers' automobiles, constituted restraint and coercion. The Board added that success or failure in keeping non-strikers out of the plant was immaterial, so long as the intent to keep them out was present.

In both of these cases there was a question of union liability for acts of its agents under Sections 8(b) and 2(13) of the Act. The Board ruled in both cases that the union is liable if the act is directed or organized by an official of the union, such as a steward or picket captain, who has authority to direct the picket line. If, however, the acts are acts of individual members without direction or authorization by an officer of the union, the union is not liable.

A similar question of coercion in mass picketing arose in a case under Section 8(a) (3), which prohibits discrimination against employees by employers.<sup>3</sup> The Board ruled that an employer's refusal to re-employ a striker who had participated in mass picketing and had openly advocated the use of force and violence, was not discriminatory action by the employer, since the picketing went beyond peaceful persuasion and was coercive activity not protected by the law.

From these cases, it would seem that the Board intends to classify as illegal union coercion any form of picketing in which there is any show of force or threat of force. Picketing is protected as "freedom of speech" in situations where the action of the pickets is limited to peaceful persuasion. Name-calling tactics are included in this protection.

## **Union Discrimination**

There are two principal cases involving discrimination by unions under Section 8(b) (2). This section makes it an unfair labor prac-

tice for a union to discriminate against an employee for anything but non-payment of dues or to cause an employer to discriminate against an employee. There are two principal cases on this question. In one case<sup>4</sup> an injunction was issued restraining the International Typographical Union from attempting to enforce a closed shop, thereby, the court said, attempting to cause employers to discriminate against non-union employees. The other case involved the National Maritime Union and the Texas Company.<sup>5</sup> The Board ruled that the union had violated Section 8(b)(2) by insisting on a union hiring hall, which in practice had discriminated against non-union employees. The Board thus held that Section 8(b)(2) prohibits all attempts by unions to force employers to violate another section of the Act, 8(a)(3), which states that it is an unfair labor practice for an employer, by discrimination in hire or tenure of employment, to encourage or discourage membership in any labor organization, except that an employer may enter into a union shop agreement if the election procedures of the Act are followed.

## **Union Refusal to Bargain**

Union refusal to bargain, Section 8(b)(3), was also involved in this Maritime case. The Board held that the union refused to bargain by insisting that the employer agree to a hiring hall before negotiating on other terms and by striking for this demand. The Board said that this section imposed on unions the same duty to bargain in good faith as that imposed on employers under the Wagner Act. The Board also held that past employer cases are significant guideposts in determining union liability under this section.<sup>6</sup>

## **Secondary Boycotts**

The part of the Act which has created more interest and concern than any other is the section outlawing secondary boycotts, jurisdictional strikes, and strikes against certification of a rival union. These provisions are included in Section 8(b)(4). Under a following section, 10(1), the injunction is made available to the Board as the first step in preventing these unfair labor practices. The preliminary investigation of all cases arising in these three situations are to be given priority over all other cases. Also, where the in-

investigating officer of the Board has reasonable cause to believe that the charge made against the union is a real one, he *must* petition for an injunction in federal court.

There have been 34 mandatory injunctions issued as of December 31, 1948, involving secondary boycotts, jurisdictional strikes, and strikes against decertification. Most of these have been in secondary boycott cases. (A secondary boycott has generally been defined as a strike or concerted refusal by employees to use, handle, or transport goods where a purpose of the strike or refusal is to prevent the employer from doing business with another employer.) One such case involved the Distillery Workers Union and the Schenley and Jardine Corporations.<sup>7</sup> In this case employees of the Schenley Corporation in Kentucky were on strike following a deadlock of negotiations for a collective bargaining contract in that plant. Employees of the Jardine Corporation, an independent liquor distributor in New York who handles Schenley Products, also went on strike, in an attempt to force the Schenley Corporation in Kentucky to agree to a collective bargaining agreement with its employees there. The U. S. District Court of Southern New York issued a temporary restraining order against the striking Jardine local. Later the dispute in Kentucky was settled, and the companies requested that the case be dropped. The court did drop the injunction proceedings, but the Board continued to press the unfair labor practice charges against the union. The Board ruled that the strike constituted a secondary boycott despite the fact that: (1) only one of the objects was forbidden by law — the union had argued that one purpose of the strike was to speed up grievance settlement at Jardine Corporation itself; (2) the unions involved were sister organizations, and the two companies had a unity of interest as manufacturer and distributor of the same product; and (3) the dispute was over terms of employment rather than to further the organizational interests of the union.

In another case which adds to the definition of an illegal secondary boycott,<sup>8</sup> Watson's Specialty Store was a local establishment which handled and installed wall and floor coverings for homes. The carpenters' local in that town had tried unsuccessfully to organize Watson's employees and had picketed the store for some months. A contractor who employed union carpenters took

a job of renovating a house. The contractor purchased floor covering from Watson's Store, and Watson insisted on doing the installation work. When Watson's men appeared on the job, the union carpenters quit work and did not go back, the job being completed soon afterwards.

The NLRB sought an injunction against this strike, but it was denied, the court holding that the strike was begun before the effective date of the Act, and that all the work on the house had been completed by the time the petition for the injunction was filed.<sup>9</sup> The Board, however, as in the Schenley case referred to above, continued to litigate the case as an unfair labor practice. (The Board may do this since the injunction is merely an aid in the prevention of unfair labor practices and apart from the hearings and rulings made by the Board in the final handling of unfair labor charges.) The Board ruled that the strike had continued after the effective date of the Act and so was subject to its provisions. The Board's decision stated that the union's action went beyond refusing to work on a job with non-union men because the real purpose was to organize Watson's Store. The Board issued a cease and desist order against the union. (This case is important also in that it dealt with a local construction situation. This will be mentioned again in the section on the coverage of the Act.)

A wide-sweeping decision involving a union's "We Do Not Patronize" list has just been handed down by the Board in another local building dispute.<sup>10</sup> In this case, employees of the Wadsworth Company, manufacturer of prefabricated houses, went on strike in a dispute over the terms of a new contract. The Wadsworth plant was picketed, but the plant continued to operate on a non-union basis, with the striking employees being replaced.

Klassen, a builder of Wadsworth prefabricated houses, hired a carpenter who was a member of the union which was engaged in the dispute with the manufacturer. The local building trades council voted to place Klassen on its "We Do Not Patronize" list, the union carpenter left his job, and the building site was picketed. The picketing was wholly peaceful in character. As a result of the picketing, drivers for several trucking companies refused to carry goods through the picket lines.



Wadsworth and Klassen then brought an unfair labor practice charge against the union, alleging a secondary boycott. The union argued that its action in boycotting Klassen was a justifiable one in that its purpose was to protect the standards of the union. The Board ruled, however, that such a product boycott is one of the precise evils which Congress intended to eliminate by the Act's secondary boycott section. The union argued that Klassen was not a neutral party but was profiting by the position taken by Wadsworth. The Board ruled, however, that a customer of an employer with whom the union has a dispute is a neutral party intended by the law to be protected from union pressures.

The Board overruled other union arguments by saying peaceful picketing and the "Do Not Patronize" lists must be viewed as a direct appeal to employees not to perform services for the employer and thus are included within the actions banned by the section. In such cases, unions are not protected by the free speech provision of Section 8(c), the Board said, since they are engaged in an illegal action.

In another secondary boycott case<sup>11</sup> which involved picketing in a local situation, a manufacturing company had undertaken some construction work in its plant. This work was contracted to a construction firm and a special gate cut for use by the construction workers. Some time later, the production workers struck the plant, and began picketing the gates, including the one made for the construction workers. The U. S. District Court granted the injunction sought by the Board, saying that the act of picketing the special gate for construction workers constituted an attempt to force the construction firm to cease doing business with the manufacturing company. This, the Board said, was a violation of Section 8(b) (4) (A). The Board has not issued a final order on the case.

However, union activity which is not an illegal secondary boycott is defined in *Douds v. Metropolitan Architects*.<sup>12</sup> In this case, Ebasco Company was an engineering services firm that contracted part of its work out to Project Company, a large part of whose work came from Ebasco. A labor dispute arose at Ebasco Company, and the employees went out on strike. When this happened, an even greater portion of Project's work — about 75 per cent — was on

contract from Ebasco. Some work, started at Ebasco, was transferred to Project Company. The union of Ebasco employees then picketed Project Company. When an attempt was made to secure an injunction against the picketing at Project, the court held that this picketing did not constitute a secondary boycott because Project was doing work that, prior to the strike, was done by Ebasco employees, and this was, in effect, strike-breaking. Therefore, the injunction was denied. The trial examiner of the Board later made the same findings and recommended that the case be dismissed.

## **Injunctions in Unfair Labor Practices**

In addition to the required use of the injunction in secondary boycotts and other cases coming under Section 8(b)(4) of the Act, the NLRB General Counsel may petition for injunctions in any other unfair labor practice case. To date this discretionary power of the general counsel has been used sparingly. There had been only six such requests for injunctions as of December 31, 1948. The most important case was the ITU case, mentioned above, involving discrimination and refusal to bargain. Injunctions were also granted against the United Mine Workers for refusal to bargain with the Southern Coal Operator's representative,<sup>13</sup> and a temporary restraining order was granted against the General Motors Company insurance plan.<sup>14</sup> The request for an injunction was denied in a case in which Boeing Airplane Company was accused of refusal to bargain.<sup>15</sup> Two other cases were withdrawn.

It was generally believed that private persons had no right to seek injunctive relief against alleged unfair labor practices under the new law. There has been some difference of opinion among the district courts, but in the only case to reach a circuit court of appeals<sup>16</sup> the court upheld the Board's position and overruled a district court which had granted an injunction to a union against an employer who refused to bargain. This injunction had been granted by the lower court, despite the fact that the union had filed the case with the Board. The circuit court said that the courts did not have jurisdiction to grant the injunction, since the union had adequate administrative remedy before the Board; that is, the union would file the case with the Board, after which hearings would be held and a final order issued against the unfair practice.

A district court in California also denied a union's request for injunctive relief against an employer's alleged refusal to bargain. The court held that the Board has exclusive power to determine whether the unfair labor practice had been committed.<sup>17</sup> Another district court<sup>18</sup> granted an injunction sought by a company, restraining the union from picketing in a secondary boycott situation. The court based its decision on Section 303 of the Act, which allows damage suits in such cases. The court held that since the company was suffering irreparable damage for which the remedy provided by the Act was inadequate, the injunction should be granted. A private injunction was granted in another secondary boycott case where the union was striking to prevent the hiring of certain employees. The court said that its power to issue the injunction was contained in the damage suit provision (Section 303).<sup>19</sup>

In summarizing these secondary boycott and injunction cases, it can be seen that illegal secondary boycotts have been clearly defined as any attempt to force union demands or organization on employers by striking or picketing other employers. This has been extended to include local construction situations, as well as actions by two locals of the same union. Generally, the courts have refused to issue an injunction, where the dispute was clearly intra-state, or where a strike-breaking situation was involved. The very important question of the private injunction, ruled out since the Norris-LaGuardia Act of 1932, is still unanswered. The final interpretation will depend on a U. S. Supreme Court ruling, since there is difference of opinion among the lower courts.

## **Other Union Unfair Practices**

The remainder of the union unfair labor practices cases have not been decided in sufficient number to set any pattern. This means that the question of jurisdictional strikes, strikes against certification, excessive initiation fees, and payment for work not performed have yet to be clarified. In one case involving a strike against certification,<sup>20</sup> an injunction was granted against a union which was on strike to force recognition as the bargaining agent where another union had been certified by the Board. The striking union had not complied with the Act's filing requirements and so was not placed on the ballot.

## EMPLOYER UNFAIR LABOR PRACTICES

The biggest change in employer unfair labor practices has resulted from Section 8(c) of the Act, the "freedom of speech" clause. The Act states that the "expression of any views" by an employer shall not constitute an unfair practice unless the expression contains a threat of reprisal or force or a promise of benefit. This means that interference, restraint, or coercion by employers is not broadly defined as it was under the Wagner Act.

In several cases where unions alleged that employer interference and coercion had been used, the Board has ruled that certain employer actions are legal under the free speech provision. An employer's pre-election letters and notices to employees, stating that the interest of the employees and the employer would be best served by a vote against the union, were permissible, the Board ruled, since they contained no language which was coercive, either expressed or implied.<sup>21</sup> In one case,<sup>22</sup> the distribution of sample ballots marked against the union, when not accompanied by threats of reprisal against those who voted for the union, was held to be a simple expression of the company's opinion. In another case,<sup>23</sup> however, the Board, while finding that the company's pre-election campaign was not coercive and so was protected as "free speech," still cancelled the election results on the ground that the extreme campaign methods had created an atmosphere in which it was impossible for the employees to vote freely. In another case,<sup>24</sup> the Board ruled that a supervisor's statement that "if unionized, the employees would have to take a cut in salary" and other such statements constituted coercion of the employees. However, the Tenth Circuit Court of Appeals reversed the Board and held that such statements where "no employee was led to believe that union membership would affect his employment" were protected free speech and did not constitute an unfair labor practice. The Board has clearly shown that the "captive audience" doctrine no longer applies. Under the Wagner Act, it was held to be an unfair labor practice for an employer to require attendance at a meeting called by the employer on company time. The Board ruled in the Babcock and Wilcox case<sup>25</sup> that although the employer required the employees to attend and listen to the speeches, it was not a violation of the Act.

Some limits on employer free speech have been recognized by the Board, however. It was ruled that an employer coerced employees by posting a notice saying that he would never recognize a union and would move the plant to avoid bargaining.<sup>26</sup> The Board held that the statement of a foreman, saying that the entrance of a union would result in cutting the work-week to 40 hours, was a threat of economic reprisal.<sup>27</sup> The Board has also ruled<sup>28</sup> that questioning employees about union membership was interference and not merely dissemination of "views, argument, or opinion" allowed in the free speech provision of the Act.

## **Employer Domination of Labor Organizations**

The Board has departed from former standards it followed under the Wagner Act, in applying Section 8(a)(2) of the Taft-Hartley Act which designates company domination, interference, or support of a union as an unfair labor practice. In the *Carpenter Steel Company Case*,<sup>29</sup> the Board ruled that when a company has dominated, interfered, or supported a union (regardless of whether or not the union is affiliated with an outside organization) disestablishment of the union will be the appropriate remedy. However, where the unfair labor practice is limited to interference and support and has never reached the point of domination, the Board shall order only that recognition be withheld. This policy was later applied in the *Hershey Metal Products Case*<sup>30</sup> when the Board ruled that certain employer actions — permitting members of the independent union to organize on company time, offering legal assistance, and granting a pay increase demanded by the independent — constituted interference and support, but not domination, and the Board ordered only that the company withhold recognition until Board certification.

## **Discrimination Because of Union Membership**

There have been no interpretive rulings involving Section 8(a)(3), employer discrimination, and the union security provisions, other than those cases discussed earlier on union discrimination. This is one of the controversial sections of the Act that has not been the subject of interpretive rulings.

## Employer Refusal to Bargain

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer to refuse to bargain in good faith. In one case,<sup>31</sup> an employer was ordered to bargain on a pension plan. The Seventh Circuit Court of Appeals upheld this ruling, saying that the terms "wages" and "other conditions of employment" as used in the collective bargaining provisions of the Act clearly include pension and retirement plans. The Board applied the same principles in another case by ruling that the employer was required to bargain on group health and insurance plans.<sup>32</sup> Earlier, at the request of the Board, the court issued a temporary restraining order against General Motors Corporation to prevent the company from changing its insurance plan without consulting the union.<sup>33</sup>

In general, however, interpretations of "bargaining in good faith" have been favorable to the employer. The Board ruled that an employer had not given evidence of bad faith bargaining when he refused to discuss terms until the union withdrew its union shop demand. The Board found that the employer had bargained in good faith at all other times and his refusal on this point did not change the over-all picture.<sup>34</sup> In another case,<sup>35</sup> the Fifth Circuit Court of Appeals, reversing the Board, ruled an employer could refuse to grant an increase in negotiations with the union, and then subsequently give an increase to his employees on his own, without violating the Act's provision for "bargaining in good faith." The Court based its ruling on the ground that negotiations had broken down and a strike vote had been called when the increase was given. The court also said that the raise was made to meet competition from other firms in that area.

In summarizing the employer unfair labor practices, it can be said that employers now have considerably more freedom than was accorded them under the same provisions in the Wagner Act. This added freedom has largely been the result of the employer free speech provision in the Act. "Bargaining in good faith" has also been favorably interpreted, so that the employer enjoys freedom of action not available before. The major exception to this trend has been in the area of bargaining subjects where the Board and the courts have included pension and welfare plans as issues on which

the company must bargain collectively. This matter is still to be finally decided by the courts and its final outcome is uncertain.

## **REPRESENTATION ELECTION**

On the subject of elections to determine a bargaining representative, under Section 9 of the Act, the majority of the cases have followed principles established under the Wagner Act. There have been modifications, however.

### **Exceptions to the One-Year Rule**

Despite the Act's limitation of one valid election in each twelve-month period, the Board has allowed a second election in certain instances. In one case<sup>36</sup> the Board allowed a second election because the results of the first — held within the year — had not been conclusive. In another,<sup>37</sup> the Board allowed a second election because the union winning the first election was not certified with the Board due to its failure to file the affidavits as required by the Act. Since the passage of the Act, the Board has continued its former policy of not holding an election while a contract is in force, even though the contract is for a period of two years.<sup>38</sup>

### **Who May Vote in Elections**

On the question of who may vote in elections, the Board has followed the exact letter of the law, which states that "employees on strike who are not entitled to reinstatement shall not be eligible to vote" — Section 9(c)(3). In a leading case,<sup>39</sup> the union was engaged in a strike over wages. While the strike was going on, the employer hired replacements for some of the strikers and the jobs of others were discontinued. The Board ruled that all those employees who had replaced the strikers on a permanent basis, and strikers who had been reinstated, were eligible to vote; while those employees who had been permanently replaced were not entitled to reinstatement and were not eligible to vote. The Board stated a company's claim that the strikers were permanently replaced is not the deciding factor; "the actual facts in every case must be weighed." The Board added that this provision places no limitation

on the right to strike, but conceded that it may discourage the exercise of the right in some instances.

## **Appropriate Bargaining Unit**

The question of the appropriate bargaining unit has been the subject of considerable litigation, but in the main there has been little in the way of actual interpretation of the provision. On professional employees, the Board has ruled that where the majority of employees in a unit are professional, no special election is necessary to determine if these employees want to be included in the unit.<sup>40</sup> Section 2(12) defines professional employees as any engaged in work that is (1) predominantly intellectual, (2) involves consistent use of discretion and judgment, (3) of such a character that output cannot be standardized, and (4) requiring knowledge normally gained by a prolonged course of specialized instruction. The Board has used these standards in holding that time study men are professional and not supervisory employees;<sup>41</sup> in ruling that estimators for a construction firm are professional;<sup>42</sup> and in finding that newspaper editorial employees are not professional.<sup>43</sup>

On the subject of craft units, the Board has shown, by a series of rulings, that it will grant a severance election to a craft unit even though there has been a long history of bargaining on a plant-wide basis, and although the craft employees constitute a very small group. (In these elections the craft unit decides whether it wishes to remain a part of a larger bargaining unit or form a separate bargaining unit of its own.) Craft groups which have been granted such elections include pattern makers,<sup>44</sup> die room employees,<sup>45</sup> machine shop employees,<sup>46</sup> and engineers.<sup>47</sup> The Board denied a craft-unit election to electricians who worked with other craft groups in an "integrated production process."<sup>48</sup> The Board also denied a severance election to another craft group, pointing out that the Act gave it discretion to do so.<sup>49</sup> The Act places only one restriction on this use of its discretion by the Board — that prior practice not be the only guide. In this case, the Board also considered bargaining history, separateness of the craft jobs, and the nature of the employee's duties.

The provision concerning plant guards, section 9(b)(3), states that guards may not be a part of a bargaining which includes other



workers in the plant and that no organization may be certified as bargaining agent for guards if the organization is affiliated with one which admits employees other than guards. On this provision the Board has consistently defined guard as "anyone who spends 50 per cent or more of his time performing watchmen's duties."<sup>50</sup> The Board has also denied certification to a union, chartered for guards only, because it was affiliated with the AFL.<sup>51</sup>

## Decertification

There are a few important decisions involving decertification elections. The Board ruled that a decertification petition could be withdrawn, although the employer claimed that the union had coerced the employees into withdrawing. (The Board is authorized to conduct such elections on petition by an employee or group of employees asserting that the union no longer represents them.) In another case,<sup>52</sup> the union notified the Board that it no longer claimed to represent the employees. Such a disavowal, the Board ruled, eliminated the representation question, and the pending election was set aside and the petition dismissed. The employer argued that the decertification election should be conducted anyway. The Board held that to direct the election despite the union's disclaimer would mean that for the following 12-month period, the employer could "refuse to engage in collective bargaining, not only with this union but with any other." (This would be true because of the provision limiting elections to one per year.) The Board said that it is not the purpose of the Act to aid such an objective.

## Affidavit Requirements

The filing and affidavit requirements, Sections 9(f),(g), and (h), have probably created more problems than any other provision of Section 9. These sections require unions to file certain information regarding finances, officers, and organization and bargaining procedures and all union officers to sign non-communist affidavits if they wish to use the machinery of the Board. These provisions have been the subject of considerable litigation.

Constitutionality of these filing requirements has been decided in two cases. In *National Maritime Union v. Herzog*,<sup>53</sup> the Supreme

Court upheld the constitutionality of Sections 9(f) and (g), requiring the filing of union finances, names of officers, and collective bargaining procedures. The Court ruled that it was not required in this case to rule on the constitutionality of Section 9(h), the non-communist affidavit provision. There was no opinion given by the Court explaining either ruling. The Seventh Circuit Court of Appeals has upheld the validity of the non-communist affidavit. This Court ruled that the filing requirement was constitutional in that it was an exercise of Congress's power to control interstate commerce and to legislate under the "general welfare" clause of the constitution.<sup>54</sup> The filing requirements, the Court said, were reasonable qualifications for those who seek to enjoy the "extraordinary privilege" of being exclusive bargaining agents.

The Board has ruled that parent organizations, AFL and CIO, normally are not "international labor organizations" within the meaning of the law, and thus are not required to file.<sup>55</sup> The Board said in another ruling that an individual petitioning for a representation election need not comply with filing requirements.<sup>56</sup> In this case the union was seeking to dismiss an individual's petition for decertification of the union. In a somewhat similar case, however, the Board held that an individual should be denied a place on a representation ballot where evidence showed that he was "fronting" for a non-complying union.<sup>57</sup> There are other cases where sufficient evidence was not found to show that the individual was "fronting" and the name was placed on the ballot.

The law clearly states that no investigation shall be made concerning representation if the union has not complied with the filing requirements. This, of course, bars a non-complying union from a place on the ballot in a certification election. In decertification elections, however, the Board has ruled that a non-complying union's name should be placed on the ballot. However, if the non-complying union should "win" the election, only the arithmetic results of the election, and not the union, are to be certified.<sup>58</sup> The Board stated that to rule otherwise would give non-complying unions the power to prevent being decertified.

The Board has consistently dismissed representation petitions by the complying internationals when there is any evidence that they are acting on behalf of non-complying locals.<sup>59</sup>

The whole question of representation, certification, and decertification has not met with any major interpretive changes in this period of Taft-Hartley administration. As mentioned earlier, most of the decisions have followed the interpretive pattern set under the Wagner Act, or have followed closely the language of the present law.

## COVERAGE OF THE ACT

There are several serious questions involving coverage of the Act. Perhaps the most important of these is the extension of the Board's jurisdiction to the local construction industry. It seems reasonably clear now that the Board intends to extend the coverage of the law to include almost any type of local business as long as there is an indirect relationship to interstate commerce. In the Watson Specialty Store case, mentioned earlier under secondary boycotts, the Board extended its jurisdiction to construction work on a private home. In this case the Board stated, "the legislative history shows that Congress intended the Board to exercise its plenary power to protect small and relatively local enterprises against the impact of unfair boycotts aimed at the installation of materials furnished by primary employers, the interstate commerce character of whose business is clear."

Earlier, the Board had held that a concern which manufactured and sold doors and sashes was covered by the Act, although all the sales were intrastate.<sup>60</sup> The interstate commerce was involved in the materials used, 27 per cent of which were purchased outside the state. This extension of the coverage has been questioned in some of the district courts. In two quite similar cases, a district court in Denver refused injunctions to the Board in alleged secondary boycott cases on the grounds that the disputes were not covered by the law. One case, *Sperry v. Denver Building Council*,<sup>61</sup> was concerned with the electrical work done on construction jobs that were mostly private residences. The other case, *Slater v. Denver Building Council*,<sup>62</sup> involved a local business which manufactured and installed soda fountains and counters. However, in a later case, the Tenth Circuit Court of Appeals sustained an injunction granted against a secondary boycott on a local construction job.<sup>63</sup> This court said that it was the intent of Congress to apply the provisions of the

law to local situations where there is any effect on interstate commerce.

The Board has also accepted jurisdiction over cases that involved a local trucking concern which hauled building supplies and coal<sup>64</sup> and a retail automobile dealer.<sup>65</sup>

## **Supervisors**

Another question raised in regard to coverage is the exemption of supervisors, Section 2(3). The Board has ruled that duties — hiring, firing, promotions, and transfer recommendations — shall govern in deciding supervisory capacity, rather than title. This, of course, is the definition given to the term “supervisor” in Section 2(11). In some sample cases, the Board declared check inspectors to be supervisors because they could effectively recommend dismissal.<sup>66</sup> The Board also ruled that section men in a plant were classified as supervisors and excluded from the production unit because they reported violations of rules to an overseer and relayed instructions to the men.<sup>67</sup> In another case, the Board ruled that store managers of a laundry and dry cleaning company who had no authority to hire or fire were not supervisors.<sup>68</sup>

## **Independent Contractors**

A third important question of coverage arises from the exclusion of independent contractors from coverage by the Act — Section 2(3). The legislative history of the law shows that this provision was aimed at news vendors and that it was largely the result of one case, the Hearst Publications case,<sup>69</sup> in which the Supreme Court ruled that the Board had the power to decide whether paper vendors were employees. In the first case decided under the Taft-Hartley Act,<sup>70</sup> the Board held that newsboys who have home routes under contract with the publishers are not employees, but are independent contractors under the Act. The Board stated this to be true because (1) the carriers aren't paid wages, but get their earnings from profits, (2) they determine their own methods of servicing their routes and have very little supervision from the company, and (3) the company exercises no real control over the manner in which routes are transferred or divided. Thus, the real test was the degree of control exercised over the carrier by the company.

The Board applied these same standards in deciding that insurance salesmen were employees and not independent contractors.<sup>71</sup> The Seventh Circuit Court of Appeals agreed in this case. In its ruling the Court relied on the fact that the company demanded that the salesmen devote all their time to the business, and that they produce a specified minimum of new business each year. The company trains the men and keeps a close check by records and reports on the salesmen at all times.

In summarizing the decisions on the coverage of the Act, we find that the Board has extended its jurisdiction to include many local business operations never before considered within the scope of the law. The most notable is the inclusion of the local building trades. On the questions of supervisors and independent contractors, the Board has established certain standard measurements, mentioned earlier, which are to be used in determining each individual case.

## RESTRICTION ON POLITICAL CONTRIBUTIONS

The final major area which has been the subject of any interpretive rulings is Section 34, which bans political contributions by unions. The big case involving political expenditures was the *CIO News* case,<sup>72</sup> a test case on the constitutionality of this provision of the Act. The district court upheld the union's contention that it was unconstitutional as a violation of freedom of speech, but the Supreme Court ruled that this decision was too broad. In a 5 to 4 decision, the majority of the Court ruled that the case against the CIO should be dismissed, not because the ban on political expenditures was unconstitutional, but because the CIO did not violate the law. The Court ruled that the Act did not intend to prohibit political comment in union papers published in the regular course of conducting union affairs.

In another case which places the issue squarely on the question of constitutionality the Federal District Court of Connecticut rejected all the union's arguments and declared that the section was constitutional as an exercise of the power of Congress to regulate federal elections.<sup>73</sup> The union had spent union funds for political advertising in newspapers and on the radio.

## CONCLUSION

The foregoing case summaries have been an attempt to explain, in part at least, some of the administrative interpretations and problems arising under the Taft-Hartley Act. As has been pointed out, some areas of the Act have been handled in such a way that some sort of conclusive pattern has been established. This is true of most of the representation and coverage questions as well as the constitutionality of various parts of the law. There are other areas where there is some indication of what the law means to the Board and the courts, as in union coercion and secondary boycotts as well as employer free speech rights and bargaining duties. However, there are still major questions to be finally settled in these areas, such as the question of picketing as free speech or coercion and the whole matter of secondary boycotts, in which the fact situations vary so widely in the individual cases that it probably will be a long time before these provisions are clearly defined. The same is true of employer freedom of speech.

There is still a third group of provisions where there have been so few cases, or the treatment has been so varied, that no conclusion can be made. This group includes, among other things, private use of the injunction, strikes against certification, jurisdictional strikes, excessive initiation fees, union liability, and political expenditures.

Another factor contributing to the inconclusiveness of the meaning of various provisions is the fact that the great majority of the rulings handed down have been by the Board or the lower courts. Until these issues have been ruled upon by the higher courts, it is difficult to say if the current interpretation will stand.

## Notes

1. *In the Matter of Perry Norvell Company and United Shoe Workers of America*, 80 N.L.R.B. No. 40 (1948)
2. *In the Matter of International Longshoremen's and Warehousemen's Union, Local 6 and Sunset Line and Twine Company*, 79 N.L.R.B. No. 207 (1948)
3. *In the Matter of Dearborn Glass Company and Amalgamated Local 453, United Automobile, Aircraft, and Agricultural Workers of America, and Local 173, General Service Employees International Union*, 78 N.L.R.B. No. 124 (1948)
4. *Evans, etc. v. International Typographical Union et al.*, 76 F. Supp. 881 (1948)
5. *In the Matter of National Maritime Union and Joseph Curran et al. and Texas Company*, 78 N.L.R.B. No. 137 (1948)

6. *Madden, etc. v. International Union, United Mine Workers of America, et al.*, 79 F. Supp. 616 (1948)
7. *In the Matter of Wine, Liquor, and Distillery Workers Union, Local 1 and Schenley Distillers Corporation; same and Jardine Liquor Corporation*, 77 N.L.R.B. No. 61 (1948)
8. *In the Matter of Local 74, United Brotherhood of Carpenters and Joiners of America, and Jack Henderson, individually and as agent for Local 74, etc. and Watson's Specialty Store*, 80 N.L.R.B. No. 91 (1948)
9. *Styles, etc. v. Local 74, United Brotherhood of Carpenters and Joiners of America*, 74 F. Supp. 499 (1947)
10. *In the Matter of United Brotherhood of Carpenters and Joiners of America and Wadsworth Building Company, Inc., and Klassen and Hodgson, Inc.*, 81 N.L.R.B. No. 127 (1949)
11. *Exans, etc. v. United Electrical, Radio, and Machine Workers of America*, 15 C.C.H. Labor Cases Par. 64.718 (August 27, 1948)
12. *Douds, etc. v. Metropolitan Federation of Architects, Engineers, Chemists, and Technicians, Local 231, United Office and Professional Workers*, 75 F. Supp. 499 (1948)
13. See note 6.
14. The case brought against the General Motors Corporation was dropped before hearings were held on the injunction. Thus, only the temporary restraining order was issued. *Bowen v. General Motors Corporation*, D.C.N.Y., Civ. No. 44-674 (1948)
15. *Graham, etc. v. Boeing Airplane Company et al.*, 15 C.C.H. Labor Cases Par. 64.604 (1948)
16. *Amazon Cotton Mill Company, and National Labor Relations Board, Intervenor v. Textile Workers Union of America*, 76 F. Supp. 165 (1948)
17. *International Longshoremen's and Warehousemen's Union, Local 6 v. Sunset Line and Twine Company et al.*, 77 F. Supp. 119 (1948)
18. *Dixie Motor Coach Corporation v. Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America*, 74 F. Supp. 952 (1947)
19. *Mills v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada*, 15 C.C.H. Labor Cases Par. 64.791 (Sept. 8, 1948)
20. *Douds, etc. v. Local 1250, Retail, Wholesale Department Store Union of America*, 170 F 2d 695 (1948)
21. *In the Matter of Wrought Iron Range Company and Stove Mounters International Union of North America, Local 126*, 75 N.L.R.B. No. 50 (1947)
22. *In the Matter of Merry Brothers Brick and Tile Company and United Stone and Allied Products Workers of America*, 75 N.L.R.B. No. 15 (1947)
23. *In the Matter of General Shoe Corporation and Boot and Shoe Workers Union*, 77 N.L.R.B. No. 18 (1948)
24. *National Labor Relations Board v. Enid Cooperative Creamery Association*, 169 F 2d 986 (1948)
25. *In the Matter of Babcock and Wilcox Company and United Stone and Allied Products Workers of America*, 77 N.L.R.B. No. 96 (1948)
26. *In the Matter of Tygart Sportswear Company and Macharen Sportswear Corporation and District 50, United Mine Workers of America*, 77 N.L.R.B. No. 98 (1948)
27. *In the Matter of Morrison Tuning Company, Inc. and United Furniture Workers of America*, 77 N.L.R.B. No. 109 (1948)

28. *In the Matter of Ames Spot Welder Company, Inc. and United Electrical, Radio, and Machine Workers of America*, 75 N.L.R.B. No. 45 (1947)
29. *In the Matter of Carpenter Steel Company and United Steelworkers of America*, 76 N.L.R.B. No. 104 (1948)
30. *In the Matter of Hershey Metal Products Company and Ansonia Brass Workers Union, Local 445, International Union of Mine, Mill, and Smelter Workers*, 76, N.L.R.B. No. 105 (1948)
31. *Inland Steel Company v. National Labor Relations Board; United Steelworkers of America v. National Labor Relations Board*, 170 F 2d 247 (1948)
32. *In the Matter of W. W. Cross and Company and United Steelworkers of America*, 77 N.L.R.B. No. 188 (1948)
33. See note 14.
34. *In the Matter of Exposition Cotton Mills Company and Textile Workers Union of America*, 76 N.L.R.B. No. 183 (1948)
35. *National Labor Relations Board v. Crompton-Highlands Mills, Inc.*, 167 F 2d 662 (1948)
36. *In the Matter of Napa New York Warehouse, Inc. and Local 1146, Retail Clerks International Association*, 76 N.L.R.B. No. 119 (1948)
37. *In the Matter of Nashville Corporation and International Association of Machinists, Aero Lodge No. 735*, 77 N.L.R.B. No. 19 (1948)
38. *In the Matter of Acme Boot Manufacturing Company, Inc. and Creighton Neal*, 76 N.L.R.B. No. 62 (1948)
39. *In the Matter of Pipe Machinery Company and P. M. Company Independent Union*, 79 N.L.R.B. No. 181 (1948)
40. *In the Matter of Continental Motors Corporation and International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, and its Local 113*, 77 N.L.R.B. No. 50 (1948)
41. *In the Matter of Worthington Pump and Machinery Corporation and Time and Motion Study Association*, 75 N.L.R.B. No. 80 (1947)
42. *In the Matter of Austin Company and Seattle Professional Engineering Employees Association*, 77 N.L.R.B. No. 148 (1948)
43. *In the Matter of Jersey Publishing Company and Hudson County Newspaper Guild, American Newspaper Guild*, 76 N.L.R.B. No. 70 (1948)
44. *In the Matter of Westinghouse Electric Corporation and Pattern Makers League of North America*, 75 N.L.R.B. No. 73 (1947)
45. *In the Matter of Atwater Manufacturing Company and Southington Die Sinkers Lodge, No. 400 of International Die Sinkers Conference*, 76 N.L.R.B. No. 84 (1948)
46. *In the Matter of National Container Corporation, Inc. and International Association of Machinists, Lodge No. 731*, 75 N.L.R.B. No. 92 (1948)
47. *In the Matter of Allied Mills, Inc. and American Federation of Grain Processors*, 76 N.L.R.B. No. 138 (1948)
48. *In the Matter of Baldwin Locomotive Works and Local Union B-654, International Brotherhood of Electrical Workers*, 76 N.L.R.B. No. 124 (1948)
49. *In the Matter of National Tube Company and Bricklayers, Masons, and Plasterers International Union of America*, 76 N.L.R.B. No. 169 (1948)
50. The leading case is: *In the Matter of Young Patrol Service and Ship Clerks Association, Local 34, ILWU*, 75 N.L.R.B. No. 51 (1947)



51. *In the Matter of Schenley Distilleries, Inc., Old Quaker Division and Industrial Guards Federal Labor Union 24312*, 77 N.L.R.B. No. 80 (1948)
52. *In the Matter of Federal Shipbuilding and Drydock Company and Joseph C. Balchunas et al., Employees, and Industrial Union of Marine and Shipbuilding Workers, Local 116*, 75 N.L.R.B. No. 57 (1948)
53. *National Maritime Union of America et al. v. Herzog et al.*, 16 *Law Week* 3327 (1948)
54. See note 31.
55. *In the Matter of Northern Virginia Broadcasters, Inc., Radio Station W'ARL and Local Union No. 1215, International Brotherhood of Electrical Workers*, 75 N.L.R.B. No. 2 (1947)
56. See note 38.
57. *In the Matter of Campbell Soup Company and Cannery Workers and Warehousemen's Union, Local 1857, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America*, 76 N.L.R.B. No. 133 (1948)
58. *In the Matter of Harris Foundry and Machinery Company and Arthur Hays Howard and United Steelworkers of America*, 76 N.L.R.B. No. 14 (1948)
59. *In the Matter of United States Gypsum Company and United Gas, Coke, and Chemical Workers of America*, 77 N.L.R.B. 176 (1948)
60. *In the Matter of Central Sash and Door Company and International Woodworkers of America*, 76 N.L.R.B. No. 68 (1948)
61. *Sperry, etc. v. Denver Building and Construction Trades Council et al.*, 77 F. Supp. 321 (1948)
62. *Slater, etc. v. Denver Building and Construction Trades Council et al.*, 15 C.C.H. Labor Cases Par. 64,759 (Sept. 22, 1948)
63. *United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City, Missouri, and Vicinity et al., v. Sperry, etc.* 15 C.C.H. Labor Cases Par. 64,814 (November 2, 1948)
64. *In the Matter of J. H. Patterson Company and General Chauffeurs, Helpers, and Sales Drivers, Local 325, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America*, 79 N.L.R.B. No. 48 (1948)
65. *In the Matter of Liddon White Truck Company and International Association of Machinists*, 76 N.L.R.B. No. 165 (1948)
66. *In the Matter of General Electric Company and International Brotherhood of Electrical Workers*, 76 N.L.R.B. No. 142 (1948)
67. *In the Matter of Moroweb Cotton Mills Company and United Textile Workers of America*, 75 N.L.R.B. No. 118 (1947)
68. *In the Matter of Palace Laundry Dry Cleaning Corporation and Retail Clerks International Association*, 75 N.L.R.B. No. 40 (1947)
69. *National Labor Relations Board v. Hearst Publications, Inc.*, 322 U.S. 111 (1943)
70. *In the Matter of Kansas City Star Company and Newspaper Carriers' Co-operative Association of Greater Kansas City No. 526, International Printing Pressmen and Assistants' Union*, 76 N.L.R.B. No. 52 (1948)
71. *National Labor Relations Board v. Phoenix Mutual Life Insurance Company*, 167 F 2d 983 (1948)
72. *United States v. Congress of Industrial Organizations*, 16 *Law Week* 4662 (1948)
73. *United States v. Painters Local Union No. 481 et al.*, 79 F. Supp. 516 (1948)









